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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. [redacted] 21

BACARDI CORPORATION OF AMERICA, *Petitioner*,

v.

RAFAEL SANCHO BONET, TREASURER, *Respondent*,

and

DESTILERIA SERRALLES, INC., *Intervenor-Respondent*.

BRIEF FOR INTERVENOR-RESPONDENT, DESTILERIA SERRALLES, INC., IN OPPOSITION TO PETITION FOR CERTIORARI.

DAVID A. BUCKLEY, JR.,
Attorney for Intervenor, Respondent.

Of Counsel:
H. RUSSELL BISHOP.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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OPINION OF THE COURTS BELOW.

The opinion of the District Court of the United States for the District of Puerto Rico is not officially reported. It is in the transcript of the record at pages 95-116. The opinion of the Circuit Court of Appeals (R. 429-443) is reported in 109 F. (2d) 57.

QUESTIONS PRESENTED.

The petition for certiorari does not state the questions presented, as such. They may be deduced, however, from the specification of errors found on pages 17 and 18 of the petition and brief and may be stated as follows:

1. Are sections 44 and 44(b) of the Spirits and Alcoholic Beverages Act of Puerto Rico, as amended, invalid because they destroy substantive rights in trade-marks guaranteed to petitioner by the Inter-American Convention and Protocol for trade-mark and commercial protection?
2. Are those sections of the said act invalid because they are in conflict with the Federal Alcohol Administration Act and regulations issued thereunder?
3. Does the Inter-American Convention and Protocol for trade-mark and commercial protection preclude the Puerto Rican Legislature from enacting the legislation which is attacked by the petitioner?
4. Do these sections of the Puerto Rican Spirits and Alcoholic Beverages Act violate the equal protection and due process clauses of the Organic Act of Puerto Rico and the fifth amendment to the Federal Constitution?
5. Does the Puerto Rican Spirits and Alcoholic Beverages Act violate the commerce clause of the Federal Constitution?
6. Was the enactment of sections 44 and 44(b) of the Puerto Rican Spirits and Alcoholic Beverages Act of Puerto Rico a valid exercise of the police powers of the Puerto Rican Legislature?

STATEMENT OF THE CASE.

The petition is for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit (R. 429-443; 109 F. (2d) 57) reversing the judgment of the District Court of the United States for the District of Puerto Rico (R. 95-116) and remanding the case to that Court with instructions to dissolve the injunction and to

dismiss the bill of complaint, at petitioner's cost. The mandate was stayed on January 18, 1940 (R. 443).

The Bacardi rum business was established in Cuba in 1862. It was incorporated there as Compania Ron Bacardi, S.A., in 1919 and that corporation has ever since conducted and still conducts a business in the production of alcoholic liquors, principally rum. The rum thus produced is sold under various tradenames including the word "Bacardi," "Bacardi y Cia," the representation of a bat in a circular frame, and certain distinctive labels (R. 2, Finding 6; R. 110).

Compania Ron Bacardi, S.A. has registered among others, seven trade-marks in the United States Patent Office, all of which said registrations were made during the period 1933 to 1936 (R. 25-34) and are valid and subsisting. Four of these seven trade-marks were registered in the office of the Executive Secretary of Puerto Rico on April 10, 1935, as follows:

No. 3916—Bacardi
No. 3917—Bat Trade-mark
No. 3918—Ron Bacardi Superior Carta de Oro
No. 3919—Ron Bacardi Superior Carta Blanca

Bacardi rum, prior to prohibition was sold in large quantities in the United States and in Puerto Rico, and after the repeal of prohibition the sales were resumed and have continued in both places to the present time. All of the aforesaid sales were made under the above-described tradenames, and later, trade-marks (R. 2-4; finding 7; R. 110).

The petitioner is a Pennsylvania corporation, organized April 24, 1934. On June 8, 1934, the petitioner acquired from Compania Ron Bacardi, S.A., the right to use the registered trade-marks of the Cuban Company, and also obtained disclosures of the secret processes and methods of producing Bacardi rum. Pursuant to such agreement it brought to Puerto Rico in 1936 certain technicians who have instructed petitioner's employees in the use of said processes and methods, and who have supervised petitioner's manufacture of rum in Puerto Rico.

The petitioner first did business in Pennsylvania, but on March 28, 1936, its basic permits to warehouse, rectify, and bottle alcoholic beverages in Pennsylvania which were still in effect, were amended by the Federal Alcohol Administration to enable the petitioner to operate in Puerto Rico (R. 4-5; Finding 15; R. 115). The labels used by the petitioner in Puerto Rico have been approved by the Federal Alcohol Administration.

Petitioner on March 31, 1936, received from the Executive Secretary of Puerto Rico a certificate of registration as a foreign corporation and received from the same official on April 6, 1936, a license to do business in Puerto Rico which license has been renewed from year to year (R. 5; Finding 10, R. 110, 111). It rented a building (with option of purchase) and moved certain equipment and materials from Pennsylvania and Cuba and between April 6, 1936, and May 15, 1936, expended about $45,000.00 (R. 6). This plant produced the rum "Ron Hatuey" which was sold locally in Puerto Rico. Petitioner also secured a permit to produce and sell the rum "Consumo Corriente," likewise sold locally.

The Treasurer of Puerto Rico issued a permit for rectifying distilled spirits and to sell and offer for sale alcoholic beverages so produced, which permit was issued on July 20, 1936. (R. 288.) It stated:

> "This permit is conditioned to the compliance with the provisions of the Alcoholic Beverages Law of Puerto Rico and of all the Rules applicable in accordance with the Law now in Force or which may be in force in the future, and in accordance with the Federal Laws and Regulations applicable thereto, and shall be in force from the date of its issuance and until it may be suspended, revoked, annulled, voluntarily surrendered, or that may be terminated by virtue of the provisions of the Law or Regulations.
>
> "This permit is personal and untransferable."

On May 15, 1936, namely, *sixty-five days prior to the issuance of the permit to the petitioner*, there was approved Law No. 115, the title of which reads as follows:

"To Provide Revenues for the People of Puerto Rico by Levying Internal-Revenue Taxes on Alcoholic Spirits and Alcoholic Beverages, and for the Manufacture and Sale Thereof; to Regulate the Production, Manufacture, Importation, and Sale of Alcohol, Spirits and Alcoholic Beverages, and to Provide License Fees Therefor; to Impose Penalties for Violations Hereof; to Provide Funds for the Administration and Enforcement of the Act; to Repeal Act No. 33, Approved July 30, 1935, Entitled 'An Act to Provide Revenue for the People of Puerto Rico by Levying Excise Taxes on Alcohol and Alcoholic Beverages, and Licenses for the Manufacture and Sale Thereof; to Regulate the Manufacture, Importation, and Sale of Alcohol and Alcoholic Beverages; to Impose Penalties for Violations Hereof; to Repeal Act No. 1, Approved June 29, 1935; and for Other Purposes'; and for Other Purposes."

Section 41 of said Act provided for the issuance of permits. Subsection C(1) provided that permits should be issued to persons who on February 1, 1936, possessed a license or permit. Section C(2) provided for the issuance of permits to other persons who should comply with the requirements therein set forth. Applicants were required to make the statement that they had no intention to violate clauses (h) and (i) which read as follows:

"(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name or trade-mark, the proper name of the manufacturer thereof, such name shall not in any manner or form whatever appear on the labels for any distilled spirits of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico.

(i) The production capacity of existing distilleries, manufacturing plants and rectifying and bottling plants may be increased so as to meet the consumption demands for the brands now produced, or to meet the demand brought about by the manufacture of new brands not in conflict with clause (g) of this title.

Clause (g) referred to in clause (1) reads as follows:

> (g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade-name or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; *Provided,* (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand trade-name or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured in Puerto Rico on February 1, 1936; and (2) such restriction shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico."

Act No. 115 was repealed by Act No. 6 of the Third Special Session of the 13th Legislature. Act No. 6 was approved June 30, 1936; took effect on July 1, 1936 and was by its terms to expire on September 30, 1937. The title of the Act stated that it was for the purpose of raising revenue by levying internal revenue taxes on alcoholic spirits and beverages, and to regulate the production, importation and sale of alcohol spirits and alcoholic beverages.

Section 44 of Act No. 6 provided in part:

> "Section 44.—No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit or alcoholic beverage formally known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; *Provided,* that this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico prior to the approval of this Act; * * *."

This section also forbade the exportation from Puerto Rico of rum in containers of more than one gallon capacity.

Act No. 149, passed during the Regular Session of the Puerto Rican Legislature, was approved on May 15, 1937, became effective on August 13, 1937, and was the last statute enacted providing for a comprehensive regulation of the liquor industry in Puerto Rico. It consists mostly of amendments to Act No. 6.

Section 1 of Act No. 6 was amended by adding the following:

> "It has been and is the intention and policy of this Legislature to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market."

Section 40 of Act No. 6 was amended to provide explicitly the size of the letters which should be use on labels. The amendment is set forth in full in the appendix, *post* p. 32.

Section 44 of Act No. 6 was amended so that in its final form it reads as follows:

> "Section 44.—No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade-name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade-name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; *provided,* That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

A new section, 44(b) was added which reenacted the prohibition against the shipping of rum from Puerto Rico in containers holding more than one gallon, except in the case of rectifiers who wished to withdraw from the business and whose stock on hand did not exceed 30,000 gallons.

Section 44(b) is set out in full in the appendix, *post pp.* 35-36.

A new section 97(b) providing for appeals to the courts was added. See appendix, *post* pp. 36-37.

Section 6 of Act 149 made Act No. 6, as amended, a permanent law.

Section 7 of Act No. 149 provided:

> "In regard to trade-marks only, the provisions in the 'directing' part of Article 44 of Law No. 6, approved on June 30, 1936, shall be applicable as is hereby amended, to those trade-marks that have been used exclusively in continental United States by a distiller, rectifier, manufacturer, or packer of distilled spirits prior to February 1st, 1936, provided, that said trade-marks were not used in whole or in part by a distiller, rectifier, manufacturer or packer of distilled spirits outside of continental United States at any time prior to said date."

During the period that Act No. 6, which forbade the marketing of Puerto Rican rum under foreign labels or trade-marks, was in effect, it is stated in the complaint (R. 11) that:

> "All stocks of the high grade rum accumulating, were in the process of maturing for *marketing under the regular Bacardi rum label, trade-marks and brands which the plaintiff is authorized by the Cuban Company to use* and which are registered in the United States Patent Office, and in the office of the Executive Secretary of Puerto Rico." (Italics supplied.)

During the period 1933 to 1937 Compania Ron Bacardi (the Cuban Corporation) sold in the United States more than 375,000 cases of rum under its registered trade-marks

and spent more than $300,000 in advertising rum bearing the said trade-marks. (Finding 8; R. 110.) The petitioner has appropriated $17,500 to be spent in advertising and promotion of the Puerto Rican Bacardi rum, but at the time of the hearing January 17, 1938, had spent only $1,700 (Testimony of Bosch, R. 140). Beginning with November 1936 both the petitioner and the Cuban Corporation were selling rum under various Bacardi trade-marks in the United States (Testimony of Bosch, R. 146).

On July 31, 1937, plaintiff, appellee filed its complaint praying that the defendant, Rafael Sancho Bonet, as Treasurer of Puerto Rico, be enjoined from enforcing Sections 2, 3, 4, 5 and 7 of Act 149 on the ground that each of said sections is contrary to and violates:

> "1. The Fifth and Fourteenth Amendments to the Constitution of the United States and the Commerce Clause thereof, Article 1, Section 8, Clause 3.
>
> "2. Sections 2 and 9 of the Organic Act of Puerto Rico approved March 2, 1917, Chapter 145, Laws of 1917."
>
> "3. The 'Federal Alcohol Administration Act', approved August 29, 1935, as amended.
>
> "4. The Convention between the United States and Cuba. Treaty Series, 833, U. S. Statutes at Large, Vol. 46, page 2907, signed February 20, 1929, proclaimed by the President of the United States, February 27, 1931."

Further allegations of invalidity were:

> "Section 44 of Act No. 6 is also void and of no effect because the subject matter of said section is not embraced in the title of said Act, as required by Section 34 of the Organic Act of Puerto Rico. That Sec. 44-B is also null and void because it is contrary to Section 34 of the Organic Act of Puerto Rico, as the subject matter of that Section is not mentioned in the title of the Act."

The intervenor-respondent filed an answer as intervenor (R. 77-92) which alleged that the statute was valid and which set up five special defenses (R. 92-22) as follows:

1. Because of its having accepted benefits under the Act, the petitioner is estopped to challenge it.
2. The challenged Acts are valid because enacted pursuant to the police power.
3. The challenged Acts are valid because they are necessary enactments for the control and regulation of the liquor traffic in Puerto Rico.
4. The petitioner is estopped by its laches to challenge the statutes.
5. The facts stated in the bill do not constitute an equitable action.

A preliminary injunction was issued on August 3, 1937, (R. 95) and a permanent injunction was entered on June 30, 1938 (R. 117) prohibiting enforcement of the statute.

CONSTITUTION AND STATUTES.

The sections of the Puerto Rican statutes which petitioner contends are invalid are set forth in Appendix A, *post* pp. 32-37. Certain of these sections are also stated above (*ante* pp. 5-8).

The Constitutional Provisions are stated in Appendix B, *post* p. 38.

The provisions of the Organic Act for Puerto Rico are stated in Appendix C, *post* p. 39.

The pertinent provisions of the Federal Alcohol Administration Act are set forth in Appendix D, *post* pp. 40-45.

The pertinent parts of the Inter-American Trade-Mark Convention are in Appendix E, *post* pp. 46-47.

PETITIONER'S "REASONS FOR GRANTING THE WRIT."

(Petition, p. 8-12)

The petition fails to state sufficient reasons for the granting of the writ. The record shows no necessity for a construction of the Inter-American Trade-mark Convention and Protocol of February 20, 1929 (46 Stat. 2907). Peti-

tioner contends that a construction is necessary because the rights of foreigners, protected by the treaty but discriminated against by the Puerto Rican Statutes, are involved. There are no foreigners involved in this litigation. It is wholly between a Pennsylvania corporation, The Treasurer of Puerto Rico and Destileria Serralles, Inc., a Puerto Rican corporation.

The equal protection clause of the Organic Act of Puerto Rico is almost identical with the same provisions of the Fourteenth Amendment to the Constitution of the United States. It is unlikely that this Court would hold that there was any difference in the meaning of identical words—hence there is no need for the Court to take the case merely to say that identical words have the same meaning. Furthermore the classification assailed is one which decisions of this Court sanction.

The Puerto Rican statutes and the Federal Alcohol Administration Act do not conflict. The Federal Alcohol Administration Act obviously applies only to interstate commerce and until manufacturers of alcoholic liquor have satisfied the state or territorial requirements and are qualified to manufacture under state or territorial license, there is no reason to apply the federal statute.

Repeated decisions of this Court, some of them decided this term, demonstrate that there has been no deprivation of property without due process of law. Puerto Rico merely prohibited the use of certain trade-marks on containers of rum, and since it could prohibit the manufacture of rum altogether, it could prohibit labelling which might be detrimental to the growth of the local liquor industry.

SUMMARY OF ARGUMENT.

The trend of the Argument of Intervenor-Respondent is indicated under the headings "Questions Presented" and "Petitioner's Reasons Relied on for Allowance of the Writ", *ante* pp. 2, and 10-11, respectively.

ARGUMENT.

I.

The Challenged Statutes Do Not Deny Petitioner the Equal Protection of the Laws, Nor Deprive It of Its Property Without Due Process of Law.

A.

Equal protection.

If there is one point of law which this Court has decided time without number, it is that a legislature may classify without offending the prohibition against the enactment of statutes denying the equal protection of the laws. An embarrassment of riches faces counsel seeking cases to cite as authority for this proposition. One of the most recent cases decided by this Court on the subject states the rule and cites the leading cases. In *Rapid Transit Corporation* v. *City of New York*, 303 U. S. 573, the Court, through Mr. Justice Reed, said at p. 578:

> "1. *Classification.* No question is or could be made by the Corporation as to the right of a state, or a municipality with properly delegated powers, to enact laws or ordinances, based on reasonable classification of the objects of the legislation or of the persons whom it affects 'Equal protection' does not prohibit this. Although the wide discretion as to classification retained by a legislature, often results in narrow distinctions, these distinctions, if reasonably related to the object of the legislation, are sufficient to justify the classification. *German Alliance Ins. Co.* v. *Lewis*, 233 U. S. 389, 418; *Atchison, T. & S. F. R. Co.* v. *Matthews*, 174 U. S. 96, 105; *Giozza* v. *Tiernan*, 148 U. S. 657. Indeed, it has long been the law under the 14th Amendment that 'a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it, . . . '*Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342, 357; *Borden's Co.* v. *Baldwin*, 293 U. S. 194, 209; *Metropolitan Casualty Ins. Co.* v. *Brownell*, 294 U. S. 580, 584. 'The rule of equality permits many

practical inequalities.' *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283, 296; *Breedlove* v. *Suttles*, 302 U. S. 277, 281; *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495, 509. 'What satisfies this equality has not been and probably never can be precisely defined.' *Magoun* v. *Illinois Trust & Savings Bank, supra*, 293."

In the brief in support of its petition for the writ, petitioner says on page 19:

> "But it (the Puerto Rican Statute) goes farther and so separates the class that a dividing line is drawn, marked by a mere date, and sub-classifications created. Petitioner is placed in one of these sub-classifications and all other Puerto Rican distillers occupy the other. The statute withholds from petitioner alone the fruits of successful operation under a famous name and under trade-marks having an established reputation."

The primary objection of Intervenor-Respondent to these statements is that they are so misleading as to amount to misstatements; the meaning of the statute is distorted. The statute does not withhold from the petitioner alone "the fruits of successful operation under a famous name and under trade-marks having an established reputation."

The Circuit Court of Appeals' decision on this point is clearly correct. The Court said: (R. 442)

> "We think the court's ruling that the statutes are invalid as constituting a denial of the equal protection of the laws may not stand. It is true that when this case was heard by the District Judge, the appellee was the only manufacturer affected by the particular statutory provisions here considered. But they applied to all who might later engage in the business. The clause in the Act permitting continuance of the use of labels or brands already established in Puerto Rico prior to February 1, 1936, does not unduly discriminate against foreign corporations which had not entered the field before that time."

The Act prohibits the use by any permittee under the Puerto Rican Statute of a trade-mark, name or brand, etc.,

> "if said trade-mark, brand, trade-name, commercial name * * * has been used previously in whole or in part directly or in any other manner, anywhere outside the Island of Puerto Rico; *provided* that this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

On pages 379 to 382, inclusive, of the record there is a list of all the distillers and rectifiers operating in Puerto Rico. The prohibitions against the use of certain trademarks, tradenames, etc., apply equally to each of these distillers and rectifiers; to contend otherwise is to distort the meaning of unambiguous language.

There is no conflict between the decision in *Mayflower Farms, Inc.* v. *Ten Eyck*, 297 U. S. 266, and the decision in the instant case. Petitioner contends that the statutes involved in both cases are similar because they make distinctions based upon whether or not certain activities are antecedent or subsequent to a certain date. There is no substantial similarity, however. The statute in the *Ten Eyck* case prohibited anyone from entering into the milk business who had not been engaged in that business prior to the specified date; the Puerto Rican statute produces no such effect and there is no better proof of this fact than the history of petitioner's own business in Puerto Rico as disclosed by the record.

Merely because it sets a date when rights shall commence or cease the statute does not violate any rule regarding equal protection of the laws. As said by Mr. Justice Holmes in *Sperry & Hutchinson Co.* v. *Rhodes*, 220 U. S. 502, at p. 505:

> ". . . the Fourteenth Amendment does not forbid statutes and statutory changes to have a beginning and thus to discriminate between the rights of an earlier and later time."

Petitioner, also urges that the statute is defective because it creates sub-classifications. The test, as regards equal protection, is not whether there is a sub-classification but whether the legislature could make a class of the group it did select. As recently as February 26, 1940, this Court ruled upon this question.

In *State of Minnesota* v. *Probate Court of Ramsey County, Minnesota,* O. T. 1939, No. 394, the Court speaking through the Chief Justice said:

> "Equally unavailing is the contention that the statute denies appellant the equal protection of the laws. The argument proceeds on the view that the statute has selected a group which is a part of a larger class. The question, however, is whether the legislature could constitutionally make a class of the group it did select. That is, whether there is any rational basis for such a selection. We see no reason for doubt upon this point. Whether the legislature could have gone farther is not the question * * *. As we have often said, the legislature is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be the clearest."

Petitioner grudgingly admits that classification is allowable, and then assails the classification as being contrary to common sense. It is stated on page 21 of the brief:

> "But classification is discrimination, and discriminations cannot stand as reasonable if they offend the plain standards of common sense. *Hartford Steam Boiler Inspection & Insurance Co.* v. *Harrison,* 301 U. S. 459, 462."

The obvious implication is that the classification in the assailed statutes offend "plain standards of common sense," but the classification is based upon the difference between well-known trade-marks and lesser known trade-marks; a classification which has been sustained by this Court as being reasonable in two recent cases, *Borden's Co.* v. *Ten Eyck,* 297 U. S. 251; and *Old Dearborn Co.* v. *Seagram Corp.,* 299 U. S. 183. We submit that a finding by this

Court in two instances that a classification based upon such a difference is reasonable ends the question.

The statute does not deny the petitioner nor anyone else the equal protection of the laws.

B.

Due process.

Petitioner argues that by forbidding petitioner to use the Bacardi name and trade-marks the Puerto Rican statute deprives petitioner of its property without due process of law.

The statute was enacted as an exercise of the police power of the Puerto Rican legislature. The Organic Act of Puerto Rico confers upon the legislature of Puerto Rico "all matters of a legislative character, not locally inapplicable," (Organic Act, Sec. 37). Except to the extent that it is limited by the Organic Act, the Constitution of the United States or is subject to the power of Congress to enact overriding legislation, the power of the Puerto Rican legislature is as plenary as that of the States. *Puerto Rico* v. *The Shell Co.*, 302 U. S. 253.

Under its police powers Puerto Rico could "deny any foreign corporation or non-resident the right to manufacture or sell rum within Puerto Rico." It was so held by the District Court (R. 101) and this holding was approved by the Circuit Court of Appeals. (R. 439.) This ruling has not been challenged by the petitioner. Since the right to do business may be withheld it follows that permission may be conditioned upon compliance with terms imposed by general legislation, nor does this offend the due process clause.

The acknowledged power of a state or territory to prohibit the manufacture, sale and transportation of alcoholic liquors includes the lesser power to permit such manufacture, sale and transportation subject to such regulation as the legislature may see fit to impose. This Court so held, unanimously, on November 13, 1939, in *Ziffrin, Inc.* v.

Reeves, 308 U. S. 132, saying through Mr. Justice McReynolds:

> "Without doubt a State may absolutely prohibit the manufacture of intoxicants, their transportation, sale or possession, irrespective of when or where produced or obtained, or the use to which they are to be put. Further, she may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority in respect of them. *Clark Distilling Co.* v. *Western Maryland Ry. Co.,* 242 U. S. 311, 320; *Crane* v. *Campbell,* 245 U. S. 304, 307; *Seaboard Air Line Ry.* v. *North Carolina,* 245 U. S. 298, 304; *Samuels* v. *McCurdy,* 267 U. S. 188, 197-198.
>
> "Having power absolutely to prohibit manufacture, sale, transportation, or possession of intoxicants, was it permissible for Kentucky to permit these things only under definitely prescribed conditions? Former opinions here make an affirmative answer imperative. The greater power includes the less. *Seaboard Air Line Ry.* v. *North Carolina, supra.* The State may protect her people against evil incident to intoxicants, *Mugler* v. *Kansas,* 123 U. S. 623; *Kidd* v. *Pearson,* 128 U. S. 1; and may exercise large discretion as to means employed."

Petitioner also contends that the statute works an expropriation of the Bacardi tradename and trademarks and thus deprives it of its property without due process. It is stated on page 12 of the petition that:

> "The statute in question is the sort of expropriation of good will and trademarks which was before this Court in Baglin v. Cusenier, 221 U. S. 580 * * * where the French government attempted to appropriate the Chartreuse trademarks."

The statement of petitioner that the French Government attempted to expropriate the Chartreuse trade-marks, is directly contrary to the statement of this Court through Mr. Justice Hughes, where at page 594 it is said:

> "Upon the application of the procureur of the Rèpublic, the French Court proceeded to the judicial liqui-

dation of the properties in France held by the non-authorized congregation of the Chartreux, and it was of the e properties that a liquidator was appointed. It does not appear that the Court assumed jurisdiction of the trademarks registered on behalf of the monks in other countries. On the contrary, *it appears to have been held that the question of the ownership of such trade-marks was not involved in its determination.*" (Italics supplied)

The *Baglin* case has no bearing upon this controversy.

There has been deprivation of property without due process of law; there has been no expropriation of trademarks. The decision of the Circuit Court of Appeals is not in conflict with, but directly in conformity with the oft-repeated doctrine of this Court, that in the exercise of its acknowledged police powers a legislature may impose strict regulations upon the liquor business and that the resulting inconvenience to persons affected does not constitute the taking of property without due process of law. *Mugler* v. *Kansas,* 123 U. S. 623; *Kidd* v. *Pearson,* 128 U. S. 1.

II.

There is No Conflict Between the Inter-American Convention for the Protection of Trade-Marks and the Puerto Rican Statute.

Petitioner here again urges, as it did unsuccessfully in both the District Court and the Circuit Court of Appeals, that the assailed statute is invalid because it conflicts with the "General Inter-American Convention for Trade-mark and Commercial Protection."

In its reasons for granting the writ (Petition, p. 8) petitioner contends that it is highly desirable that the Convention be judicially interpreted, and states that one of the questions which arise in this case is whether or not foreigners have been given substantive rights in their trademarks by means of the Convention. There is no such question arising under this case for the reason amongst others that there are no foreigners involved in this case. The pe-

titioner, plaintiff below, is a Pennsylvania corporation; and respondents are the Treasurer of Puerto Rico and Destileria Serralles, Inc., a Puerto Rican corporation.

The position which this Court has taken as to its right or power to settle abstract questions has often and flatly been stated to be that it has no right to decide such questions and will not consider them.

In *Marye* v. *Parsons,* 114 U. S. 325, the court said at page 329:

> "But no court sits to determine questions of law *in thesi.*"

In *Stearns* v. *Wood,* 236 U. S. 75 an action was brought by one whose personal rights were not directly violated or interfered with to question the validity of a General Order issued by the Secretary of War. This court, through Mr. Justice McReynolds said, at page 78:

> "The general orders referred to in the bill do not directly violate or threaten interference with the personal rights of appellant—a Major in the National Guard whose present rank remains undisturbed. He is not therefore in position to question their validity; and certainly he may not demand that we construe orders, acts of Congress, and the Constitution for the information of himself and others, notwithstanding their laudable feeling of deep interest in the general subject. The province of courts is to decide real controversies, not to discuss abstract propositions. *Little* v. *Bowers,* 134 U. S. 547, 557; *California* v. *San Pablo Railroad,* 149 U. S. 308, 314; *Richardson* v. *McChesney,* 218 U. S. 487, 492; *Missouri, Kansas & Texas Ry.* v. *Cade,* 233 U. S. 642, 648."

Petitioner says that it is important to determine "if industrial property conventions are self-executing when they are complete in themselves as this one is." (Petition p. 8.) Petitioner then states that there are two views held on this question, one of which is set forth in Moore's Digest of International Law, Vol. II, pp. 42 to 44; the other in 19 Op. Atty. Gen. p. 274.

There is no need in order to dispose of any of the questions arising in this case to determine whether or not industrial conventions are self-executing, and if so, when. No one denies and there is no issue here as to whether the Inter-American Trade Mark Convention is in full force and effect, and has been from its effective date. The statement of the petitioner, that there are two views upon the question which are set forth in the volumes cited above cannot go unchallenged.

The ruling by Secretary Bayard found in Vol. II of Moore's International Law Digest, p. 42, concerns a convention entered into on March 20, 1883, to which Great Britain was a party. One of the subjects provided for in the Convention was Patent Protection, and the Convention provided that the citizens or subjects of the various contracting states should enjoy in the various states the same advantages under the respective laws of those states that were then accorded to their own citizens or subjects. The question which was propounded by Her Brittanic Majesty's Government was whether or not this convention insofar as the United States was concerned, took effect immediately by reason of the ratification of the convention by the Government of the United States. The note which was written by the Secretary of State in reply to this inquiry is found on page 43 of Moore's Digest, Vol. II, and reads as follows:

> "In reply it may be said that by virtue of legislative enactments already in existence at the time of the adhesion of the United States to the convention, its general provisions, so far as they are effectual at all, took effect at once. These General provisions are contained in Article II of the convention, and provide for the reciprocal enjoyment by the subects and citizens of each of the contracting states of all rights in all other states, in respect to patents, trade-marks, and other industrial property.
>
> "So far as concerns patents for inventions and designs the United States statutes already extend to every person all the rights which American citizens

possess. Sections 4886 and 4929 of the Revised Statutes give the privilege of obtaining patents to 'any person,' no discrimination being made against foreigners."

Further on, in the same note, the subject of trade-marks is discussed and reference is made to the fact that the power of the Government of the United States in dealing with the legislation and protection of trade-marks is not complete. As to this question, the answer is as follows:

> "Some of the specific provisions of the convention of 1883 would seem to need further legislation to enable the United States to carry them into effect.
>
> Such provisions are found in Articles IX and X for the seizure upon importation of merchandise bearing unlawfully a trade or commercial mark or commercial name.
>
> No machinery exists under the legislation of the United States to enable the seizure of merchandise bearing spurious trade-marks, and it may therefore, be doubted whether these provisions can be carried out without legislation by Congress."

Clearly, the ruling of the Secretary was this: That when a Convention added nothing to the provisions of the United States statutes already in effect, the Convention took effect immediately, but if a part of the Convention provided that something should be done for which there was no statutory provision, that part of the Convention could not become effective until enabling legislation had been enacted.

The opinion of Attorney General Miller (19 Op. Atty. Gen. 273) cited by petitioner deals with the question of filing of caveats in the Patent Office preliminary to filing applications for patents. The particular question was whether the terms of the Second Article of the Convention, entered into between the United States and certain other nations of which the Swiss Confederation was one, proclaimed June 7, 1887, extended the privileges of filing caveats to the citizens of all the nations who were signatories to the convention.

The patent statutes provided that any citizen of the United States might file such a caveat and that any alien might do so provided he had resided in the United States for one year next preceding the filing of a caveat and had made an oath of his intention to become a citizen. The Attorney General held that the Second Article of the convention which purported to extend to the citizens of the contracting states the same rights to file caveats in the Patent Office as were granted the United States citizens was not self-executing. In reaching this conclusion the Attorney General's holding was identical with Secretary Bayard. It is submitted that petitioner's contention that a conflict existed between the ruling of the Secretary of State and the Attorney General falls to the ground.

One of the primary purposes of the Inter-American Trade-mark Convention was, and is stated to be by the very terms of that convention, the protection of trade-marks and trade-names; and petitioner argues that any statute which forbids the use of trade-marks and trade-names does not protect them, but on the contrary attacks them or discriminates against them, is thus contrary to and in conflict with the convention, and must therefore fall because the treaty under our system of law is paramount to the Puerto Rican statute. In reply to this argument we direct the attention of the Court to Chapter III of the Convention which is entitled "Protection of Commercial Names", and especially to Article 16, of Chapter 3 which defines the protection which is intended to be given by the Chapter. Article 16 reads as follows:

Article 16.

"The protection which this Convention affords to commercial names shall be:

(a) to prohibit the use or adoption of a commercial name identical with or deceptively similar to one legally adopted and previously used by another engaged in the same business in any of the Contracting States; and

(b) to prohibit the use, registration or filing of a trade-mark the distinguishing elements of which consist of the whole or an essential part of a commercial name legally adopted and previously used by another owner domiciled or established in any of the Contracting States, engaged in the manufacture, sale or production of products or merchandise of the same kind as those for which the trade-mark is intended."

The reading of the foregoing makes it abundantly clear that the protection given is one against infringement. Regulation such as is found in the Puerto Rican statute does not in any way conflict with the Convention and there is therefore no need for any construction of the Convention by this Court.

III.

The Puerto Rican Statutes Do Not Conflict With the Federal Alcohol Administration Act.

Petitioner contends that a conflict exists between the Federal Alcohol Administration Act and the Puerto Rican Statutes, and that the former invalidates the latter. The argument is that the Federal Act "announces the intention of the Congress to regulate the entire traffic in alcoholic beverages between the States, including Puerto Rico, subject to the limits of the Twenty-First Amendment not here involved"; therefore the Federal Act completely displaces any local act not strictly in accord with the Federal Act; that since petitioner has basic permits from the Federal Alcohol Administration to manufacture rum and to warehouse, bottle, sell and ship the rum, therefore petitioner has the right to manufacture, bottle and ship the rum, regardless of the provisions of the Puerto Rican Statute.

This argument entirely overlooks the fact that the Puerto Rican Statutes are not, and are not intended to be a regulation of interstate commerce, nor are they set up in opposition to the Federal power to regulate the manufacture, sale and shipment of liquors. The Puerto Rican statutes

are a valid exercise of the police powers of the Puerto Rican Legislature, exerted for the purpose of regulating the manufacture and sale of intoxicating liquors, a subject which it has been decided time and time again by this Court to be subject to the jurisdiction of the states and territories. *Kidd* v. *Pearson,* 128 U. S. 1; *Mugler* v. *Kansas,* 123 U. S. 623.

The police powers of Puerto Rico are as broad as those of a state. *Puerto Rico* v. *The Shell Co.,* 302 U. S. 253. That case held that the legislative power granted to Puerto Rico by Section 37 of the Organic Act giving the Legislature "all legislative power not otherwise locally inapplicable" gave it the same police powers that a state has. In that case it was said that the grant of legislative power was as "broad and comprehensive as language could make it." 302 U. S. 261. This statement was repeated with approval in the recent case of *Rubert Hermanos, Inc.* v. *The People of Puerto Rico,* O. T. 1939, 582, decided March 25, 1940.

The police power of Puerto Rico being as extensive as that of a state, the decisions by this Court upon state power to prohibit or regulate the manufacture and sale of liquor directly control the issue here. Two decisions of this Court clearly dispose of the contentions raised by the petitioner. The first of these, *Kidd* v. *Pearson,* 128 U. S. 1, contained a direct ruling upon the question in this case, which is, may the local Legislature permit the manufacture and sale of liquor and yet regulate or prohibit the manufacture or sale of the liquor for the purposes of transportation beyond the limits of the State.

In that case, a statute of Iowa provided (1) that foreign intoxicating liquors might be imported into the state and there kept for sale by the importer in the original packages or for transportation in such packages and sale beyond the limits of the state; and (2) that intoxicating liquors might be manufactured and sold within the state for medicinal, culinary and sacramental purposes, but for no other pur-

poses, not even for the purpose of transportation beyond the limits of the state.

This statute was attacked on the ground that it unduly burdened and attempted to regulate interstate commerce. This Court held otherwise, saying at page 23:

> "We have seen that whether a State, in the exercise of its undisputed power of local administration, can enact a statute prohibiting within its limits the manufacture of intoxicating liquors, except for certain purposes, is not any longer an open question before this court. Is that right to be overthrown by the fact that the manufacturer *intends* to export the liquors when made? Does the statute in omitting to except from its operation the manufacture of intoxicating liquors within the limits of the State for export, constitute an unauthorized interference with the power given to Congress to regulate commerce?
>
> "These questions are well answered in the language of the court in the *License Tax Cases*, 5 Wall. 462, 470: 'Over this commerce and trade (the internal commerce and domestic trade of the States) Congress has no power of regulation, nor any direct control. This power belongs exclusively to the States. No interference by Congress with the business of citizens transacted within a State is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature. The power to authorize a business within a State is plainly repugnant to the exclusive power of the State over the same subject.' The manufacture of intoxicating liquors in a State is none the less a business within that State, because the manufacturer intends, at his convenience, to export such liquors to foreign countries or to other States."

In *Ziffrin, Inc.* v. *Reeves*, 308 U. S. 132, decided at this term, a similar question to the one involved in this case was presented. The Kentucky statute, comprehensively regulating the production and distribution of alcoholic beverages, provided that liquor should not be transported, except by persons qualified in accordance with the terms

of the Act. Ziffrin, Inc., having failed to qualify, attacked the statute on the ground that the statute was a regulation of and a burden upon interstate commerce. It was argued if the distillation, sale and transportation was permitted, the State could not annex to its consent to manufacture and sell the ban upon the carriage of interstate exports of liquors, except by qualified carriers. This contention was rejected by this Court on the ground that having the power to prohibit Kentucky also had the lesser power to regulate the manufacture and transportation as it saw fit.

The effect of the Kentucky statute and of the Puerto Rican statute are identical. Each statute says that by complying with certain conditions, distillers may manufacture alcoholic spirits, but that having once been manufactured, the spirits may be transported only in certain specified ways,—in Kentucky by duly qualified carriers; in Puerto Rico in containers holding not more than one gallon. If the Kentucky statute does not interfere with interstate commerce, neither does the Puerto Rican statute, and by the same token neither does it conflict with the Federal Alcohol Administration Act. That the Federal Alcohol Administration Act and the regulations issued thereunder were intended to become effective only if the State or territory had laws which permitted the manufacture of liquor, and only after compliance with those laws if they existed, is illustrated by the basic permits which were received by the petitioner. Each of said basic permits contain the provision that it is "conditioned upon the compliance with * * * the laws of all States in which you engage in business." (R. 272, 273).

The argument of petitioner would seem to be that the Federal Alcohol Administration Act has the effect of authorizing those obtaining basic permits thereunder to engage in the liquor business in any state or territory, irrespective of local laws. This is manifestly erroneous, *License Tax Cases,* 5 Wall 462; it is only by complying with the local law that the Federal basic permits can be-

come operative. To the extent that they differ from Federal laws or regulations, the laws of the states and territories are paramount concerning all activities prior to the entry of the liquor in interstate or foreign commerce.

IV.

There is No Violation of the Interstate Commerce Clause of the Federal Constitution Because that Clause is Not Applicable to Puerto Rico.

The commerce clause of the Federal Constitution is not applicable to Puerto Rico. It relates only to commerce between the states of the union, foreign commerce, and commerce with Indian tribes. Puerto Rico obviously answers to none of the foregoing descriptions. The language of the commerce clause is (Article I, Section 8, Clause 3):

> "The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

Obviously, such language relates only to the States and to commerce among themselves and with foreign nations and with the Indian tribes. The Circuit Court of Appeals for the First Circuit was plainly correct in holding: "The commerce clause does not extend to Puerto Rico." *Lugo* v. *Suazo*, 59 F. (2d) 386, 390, and in reaffirming that holding in this case (R. 435).

Puerto Rico is not a "State" within the meaning of that term as it is employed in the commerce clause and elsewhere in the Federal Constitution, as, for example, in the Fourteenth Amendment.

Puerto Rico is a Territory of the United States; an organized Territory, although not yet formally "incorporated" into the Union. *People of Puerto Rico* v. *Shell Co.*, *supra.*, 302 U. S. 253, 257-259.

Congressional power to legislate with respect to commerce of or with Puerto Rico is derived from the general power given to Congress over territory belonging to the

United States by Article IV, Section 3, Clause 2; *Ex Parte Hanson,* 28 Fed. 127.

It is only in a general sense that the Constitution applies to Puerto Rico. It was said by Chief Justice Taft in *Balzac* v. *People of Porto Rico,* 258 U. S. 298, 312:

> "The Constitution of the United States is in force in Porto Rico as it is wherever and whenever the sovereign power of that government is exerted. * * * The Constitution, however, contains grants of power and limitations which in the nature of things are not always and everywhere applicable, and the real issue in the *Insular Cases* was not whether the Constitution extended to the Philippines or Porto Rico when we went there, but which of its provisions were applicable by way of limitation upon the exercise of executive and legislative power in dealing with new conditions and requirements."

It has been held by this Court that many of the provisions of the Constitution do not apply to Puerto Rico. For example, the provisions of the Fifth Amendment prohibiting criminal prosecutions without prior indictment (*Porto Rico* v. *Tapia* and *Porto Rico* v. *Muratti,* 245 U. S. 639), the provisions of the Sixth Amendment guaranteeing the right of trial by jury (*Balzac* v. *Porto Rico, supra,* 258 U. S. 298), the provisions of Article I, Section 8, Clause 1, requiring that all duties, imposts and excises shall be uniform throughout the United States (*Downes* v. *Bidwell,* 182 U. S. 244), and the provisions of Article I, Section 9, Clause 5, that no tax or duty shall be laid on articles exported from any State (*Dooley* v. *United States,* 183 U. S. 151).

Clearly, therefore, the question is not of violation of the interstate commerce clause by the Puerto Rican legislature, but whether the legislature has acted within its orbit. This question must be answered in the affirmative in view of the prior decisions of this Court as to the legislative power of Puerto Rico.

V.

The Decision of the Circuit Court of Appeals is Entirely Consistent With Cardinal Rules of Decision Followed by This Court.

The decision of the Circuit Court of Appeals is based upon the following propositions:

1. The Puerto Rican legislative power is sufficiently broad to enable the Legislature to pass the assailed statutes which are a detailed regulation of the liquor industry in Puerto Rico. (R. 436).

   Such a holding is directly in agreement with the most carefully considered decision of this Court in *Puerto Rico* v. *The Shell Company,* 302 U. S. 253, of which decision this Court said on March 25, 1940:

   > "The breadth of local autonomy reposed by Congress in the Legislative Assembly was elucidated too recently and too thoroughly in *Puerto Rico* v. *The Shell Company** to call for repetition here. (*People of Puerto Rico, Petitioner,* v. *Rubert Hermanos, Inc.,* No. 582 O. T. 1939).

2. Since it had power to prohibit the manufacture, sale and transportation of liquor, Puerto Rico could attach such conditions as it saw fit to the granting of permission to engage in the liquor business. (R. 440).

   This holding is directly in accord with the decision of this Court in *Ziffrin, Inc.* v. *Reeves* (Nov. 13, 1939) 308 U. S. 132.

3. The legislative purpose being legitimate, it lies beyond the scope of the judiciary to strike down the statutes because of any doubts as to the wisdom or sufficiency of the legislation. (R. 440, 441). *Nebbia* v. *New York,* 291 U. S. 502, 537.

4. Since the Court could not without doubt hold that the statutes were arbitrary or capricious, it could not hold that the due process clause was violated. (R. 441).

   This is thoroughly consistent with *St. Joseph Stockyards Company* v. *United States,* 298 U. S. 38; *Standard Oil Company* v. *Marysville,* 279 U. S. 582; and *West Coast Oil Company* v. *Parrish,* 300 U. S. 379.

5. The prohibition against the use of certain trade-marks or trade-names applied to all persons who might attempt to use such trade-marks or trade-names and since it thus applied to all in the same class it did not deny petitioner, nor anyone the equal protection of the laws. (R. 441, 442).

   This holding simply follows the established doctrine of this Court. *Borden* v. *Ten Eyck,* 297 U. S. 251; *Rapid Transit Corporation* v. *New York,* 303 U. S. 573, 578.

The rule that the courts will not question the wisdom or effectiveness of legislation, because decision as to those matters is peculiarly a legislative matter applies particularly to Puerto Rican legislation because of the legislators' knowledge of problems there, a knowledge which mainland courts do not and could not be expected to have.

On March 25, 1940 this Court in *Puerto Rico* v. *Rubert Hermanos, Inc.,* No. 582 O. T. 1939, decided that the Puerto Rican legislature was competent to enact penalties for violations of a congressional act which as enacted by the Congress made no provisions for penalties. The Court said through Mr. Justice Frankfurter:

> "Surely nothing more immediately touches the local concern of Puerto Rico than legislation giving effect to the Congressional restriction on corporate land holdings."

In granting Puerto Rico legislative power by Section 37 of the Organic Act, however, Congress did not confine the

legislative discretion within any limit. That grant of power, as has been amply demonstrated above by argument and by quotations from decisions of this Court, conferred upon the Puerto Rican Legislature all the police powers of a state.

CONCLUSION.

The writ of certiorari should be denied. The decision of the Circuit Court of Appeals is clearly correct. The petitioner has failed to advance any substantial reasons for the granting of the writ, and there are no questions of general importance involved in the case. The questions arising in the case such as due process, equal protection of the laws, extent of the police powers of the Puerto Rican Legislature, etc., have all been decided strictly in accordance with the established doctrine of this Court, and it would serve no useful purpose for this Court to repeat its ruling on these Puerto Rican questions, all of which have been fully considered and passed upon within the last two or three years.

Respectfully submitted.

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APPENDIX A.

Puerto Rican Statues.

ACT No. 115, "ALCOHOLIC BEVERAGE LAW OF PUERTO RICO," approved May 15, 1936; Laws of 1936, regular session, pp. 610, *et seq.*

> Sec. 41.—[Pertinent parts copied in Statement, *ante*, pp. 5-7; Laws of 1936, at pp. 640-646].
>
> Sec. 97. * * *—and it shall be in effect until September 30, 1936, as it contains provisions of an experimental nature.

ACT No. 6, "SPIRITS AND ALCOHOLIC BEVERAGES ACT," approved June 30, 1936; Law of 1936, special session, pp. 44, *et seq.*

> To provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes.

Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear on the label the following phrase in English: "Puerto Rican Rum," in letters the size of which the Treasurer shall by regulation prescribe, as well as the name of the person owning the distillery where said rum was distilled. On the label of every alcoholic beverage shall also appear the word "Distilled," "Rectified," or "Blended," as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose. [at p. 76].

Section 44.—No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formerly known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; *Provided,* That this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico prior to the approval of this Act; and *Provided, further,* That distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and the regulations of the Treasurer. [at p. 78].

ACT No. 149, APPROVED MAY 15, 1937; Laws of 1937, regular session, pp. 392, 396.

To amend Section 1 by adding Section 1(*B*) which declares the Principles and policy of Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes"; to amend Section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend Section 44 of said Act, by imposing conditions upon the holders of such permits; to add Section 44(*B*) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend Section 97 of said

Act, by providing for remedies before the proper courts; to amend Section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—Section 1 is hereby amended by adding Section 1(*b*) to Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for The People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes," which section shall be as follows:

"Section 1.—The short title of this Act shall be "Spirits and Alcoholic Beverages Act.

"Section 1(*b*).—*Declaration of Policy.* It has been and is the intention and the policy of this Legislature to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market."

Section 2.—Section 40 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English *Puerto Rican*

Rum, in letters not less than five-sixteenths (5/16) of an inch high and of lines of one-sixteenth (1/16) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths (4/5) of a pint and less the phrase *Puerto Rican Rum* must appear on the label in letters not less than one-eighth (⅛) of an inch high, said phrase to be not less than one and one-half (1½) inches long. On the label of every alcoholic beverage shall also appear the word *distilled, rectified,* or *blended,* as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; *Provided, further,* That the trade-mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturers, distiller, rectifier, bottler, or canner appears."

Section 3.—Section 44 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 44.—No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside of the Island of Puerto Rico; *Provided,* That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

Section 4.—Section 44(*b*) is added to said Act No. 6, approved June 30, 1936, which section reads as follows:

"Section 44(*b*).—Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized for-

mulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the continental United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the Treasurer; *Provided,* That where any rectifier presents to the Treasurer a sworn application stating that he wishes to withdraw from business and to liquidate his stock of rum, provided said stock does not exceed 30,000 gallons at the equivalence of 100° proof, the Treasurer is empowered to authorize the sale of such stock in barrels of 40 gallons or more, either for sale in Puerto Rico or for exportation to the United States or to any foreign country. The rectifier obtaining said authorization shall show that the liquidation will be carried out in good faith, for the purpose of discontinuing his business as such, by furnishing the Treasurer with such details and reports as he may request in order to be satisfied that the liquidation is made in good faith, and in such case, neither the natural nor the artificial person securing such authorization from the Treasurer, nor any officer thereof, may obtain a new permit to rectify before the expiration of five years counting from the date on which the permit requested was granted, and the present permit shall be cancelled."

Section 5.—Section 97 of Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 97.—(*a*) Whenever the Treasurer of Puerto Rico is empowered by this Act to sell articles or products confiscated by him or his agents, the aggrieved natural or artificial person may appeal to the corresponding district court, and said court shall have jurisdiction, after hearing the interested parties, to confirm, revoke, or modify the decision of the Treasurer. Said appeal shall be filed within ten days after the interested person is notified.

"(*b*) Any holder of a permit obtained under the provisions of this Act or of any other Act is hereby authorized to appeal to a court of competent jurisdiction through such ordinary or extraordinary proceed-

ings as may be necessary, to demand protection against violations of this Act on the part of other persons, upon the giving of a bond in an amount of not less than five thousand (5,000) dollars nor more than thirty thousand (30,000) dollars."

Section 6.—Section 106 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 106.—An emergency is hereby declared to exist which requires that this Act take effect immediately, and, therefore, Act No. 6 entitled 'An Act to provide revenues for The People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes,' which bears also the short title Spirits and Alcoholic Beverages Act, approved June 30, 1936, as amended, shall be in full force and effect beginning with the approval of this Act, for an indefinite period of time, as a permanent law, it having evidenced its efficacy during the time it was in force as a law of experimental nature. Such experimental nature is hereby abolished and its indefinite and permanent nature is recognized; and all laws or parts of laws in conflict herewith are hereby repealed."

Section 7.—In regard to trade-marks, the provisions of the *Proviso* of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trade-marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits, prior to February 1, 1936, provided such trade-marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date.

Section 8.—This Act shall take effect ninety days after its approval.

APPENDIX B.

Constitutional Provisions.

Article I, Section 8, Clause 3:

> The Congress shall have Power. * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

Article IV, Section 3, Clause 2:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

Fifth Amendment.

> No person shall be * * * deprived of life, liberty, or property, without due process of law; * * *.

Twenty-first Amendment, Sec. 3.

> The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

APPENDIX C.

THE ORGANIC ACT FOR PUERTO RICO, ACT OF MARCH 2, 1917, c. 145, 39 STAT. 951:

Section 2.—That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

Sec. 25. That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a Legislature * * * designated "the Legislature of Porto Rico".

Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, * * *.

APPENDIX D.

FEDERAL ALCOHOL ADMINISTRATION ACT, 49 Stat. 977, c. 814.

To further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes.

Be it enacted * * *, That this Act may be cited as the "Federal Alcohol Administration Act."

Sec. 3. In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

This subsection shall take effect March 1, 1936.

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this Act.

Sec. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the Administrator finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

Unfair Competition and Unlawful Practices.

Sec. 5. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of dis-

tilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate: * * *

(e) *Labeling.*—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liquers, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use

of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided,* That this clause shall not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of this Act; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products: *Provided further,* That nothing herein nor any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Administrator authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, no bottler, or importer of distilled spirits, wine, or malt beverages, shall, after such date

as the Administrator fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than August 15, 1936, in the case of distilled spirits, and December 15, 1936, in the case of wine and malt beverages, and only after thirty days' public notice),[4] bottle or remove from customs custody for consumption distilled spirits, wine, or malt beverages, respectively, unless the bottler or importer, upon application to the Administrator, has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Administrator in such manner and form as he shall by regulations prescribe: *Provided*, That any such bottler shall be exempt from the requirements of this subsection if the bottler, upon application to the Administrator, shows to the satisfaction of the Administrator that the distilled spirits, wine, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue and customs are authorized and directed to withhold the release of such products from the bottling plant or customs custody unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the Administrator. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Administrator upon any application under this subsection; or * * *

(f) *Advertising.*—To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, inter-

[4] As amended by S. J. Res. 217, 74th Cong., 2d sess. Prior to the amendment and as originally enacted, the matter in parentheses read: "(but not later than March 1, 1936, and only after thirty days' public notice)."

state or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Administrator, (1) as will prevent deception of the consumer with respect to the products advertised and, as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liquers, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised. This subsection shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising. The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, brewer, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate.

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APPENDIX E.

General Inter-American Convention for Trade-Mark and Commercial Protection.

(46 Stat. 2907)

The Governments of Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua, Honduras and the United States of America, represented at the Pan-American Trade Mark Conference at Washington in accordance with the terms of the resolution adopted on February 15, 1928, at the Sixth International Conference of American States at Havana, and the resolution of May 2, 1928, at the Sixth International Conference of American States at Havana, and the resolution of May 2, 1928, adopted by the Governing Board of the Pan-American Union at Washington.

Considering it necessary to revise the "Convention for the Protection of Commercial, Industrial, and Agricultural Trade Marks and Commercial Names," signed at Santiago, Chile, on April 28, 1923, which replaced the "Convention for the Protection of Trade Marks" signed at Buenos Aires on August 20, 1910, with a view of introducing therein the reforms which the development of law and practice have made advisable;

Animated by the desire to reconcile the different juridical systems which prevail in the several American Republics; and

Convinced of the necessity of undertaking this work in its broadest scope, with due regard for the respective national legislations,

Have resolved to negotiate the present Convention for the protection of trade marks, trade names and for the repression of unfair competition and false indications of geographical origin, and for this purpose have appointed as their respective delegates, * * *

CHAPTER II.

Trade Mark Protection.

Article 3.

Every mark duly registered or legally protected in one of the Contracting States shall be admitted to registration or deposit and legally protected in the other Contracting

States, upon compliance with the formal provisions of the domestic law of such States. * * *

ARTICLE 10.

The period of protection granted to marks registered, deposited or renewed under this Convention, shall be the period fixed by the laws of the State in which registration, deposit or renewal is made at the time when made.

Once the registration or deposit of a mark in any Contracting State has been effected, each such registration or deposit shall exist independently of every other and shall not be affected by changes that may occur in the registration or deposit of such mark in the other Contracting States, unless otherwise provided by domestic law.

ARTICLE 11.

The transfer of the ownership of a registered or deposited mark in the country of its original registration shall be effective and shall be recognized in the other Contracting States, provided that reliable proof be furnished that such transfer has been executed and registered in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

The use and exploitation of trade marks may be transferred separately for each country, and such transfer shall be recorded upon the production of reliable proof that such transfer has been executed in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

CHAPTER III.

PROTECTION OF COMMERCIAL NAMES.

ARTICLE 14.

Trade names or commercial names of persons entitled to the benefit of this Convention shall be protected in all the Contracting States. Such protection shall be enjoyed without necessity of deposit or registration, whether or not the name forms a part of a trade-mark.